IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 1274 of 1987

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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ORIENTAL INSURANCE CO LTD
Versus
SHAKARBHAI DHULABHAI SENMA & ANOTHER

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Appearance :
MR RAJNI H MEHTA for the Appellant.

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 09/05/2007

ORAL JUDGMENT

The Insurance Company being aggrieved by judgment and award dated 20.03.86 passed by Motor Accident Claims

Tribunal [Main], Mehsana in MACP No. 251 of 1984 is before this Court challenging the correctness, validity and propriety of the said award.

Short facts necessary for disposal of the present matter are that one Shankarbhai Dhulabhai filed claim petition being MACP No. 251 of 1984 claiming sum of Rs.70,000/- with a submission that when he was standing On the left side of the road, Jeep No. GRW 9844 driven rashly and negligently by the driver, belonging to the respondent No.2, dashed him, leading to serious injuries.

The Insurance Company appeared before the Court and submitted that the owner of the jeep paid the premium at 4.00 PM on 28.02.84 and after receiving the premium, the policy was issued with a mention that it would be effective for the period between 28.02.84 and 27.02.1985. The submission was that the accident had taken place at about 12.00 Noon and as the premium was paid at about 4.00 PM, the policy would not cover the accident or liability thereunder which had taken place/occured before receiving the premium and issuance of the policy.

Learned Tribunal, after recording evidence and hearing the parties, rejected the defence of the owner that he had paid the premium at about 11.00 AM. The Tribunal very categorically observed that the premium was paid at about 4.00 PM. The learned Tribunal, however, held that the policy, even if was issued after 4.00 PM, would cover the period between midnight of 27.02.84 and 27.02.85. The Tribunal observed that as the policy covers the said period, then irrespective of the accident taking place prior to receipt of the premium, the

Insurance Company would not be entitled to deny liability.

The Insurance Company, being aggrieved by the said judgment and award, is before this Court.

Shri Rajni Mehta, learned Senior Counsel for the appellant submitted that the approach of the learned Tribunal was patently illegal and contrary to the settled legal position. Placing reliance upon the judgment of the Apex Court in the matter of New India Assurance Co. Ltd. vs. Sita Bai and others reported in 2000 ACJ 40, he makes a submission that the Insurance Company's liability would commence after receiving the premium, and not before that.

None appears for the claimant or for the owner of the vehicle, though are served.

In the matter of New India Assurance Co. Ltd. vs. Sita Bai [supra], the question before the Apex Court was that from what time the liability of the Insurance Company would commence. In the said matter, the accident occurred at 10.00 AM on 16.04.87 and the policy was obtained at 9.00 PM on the same date. The policy in the said matter recorded the date and time of commencement, and the Supreme Court, therefore, observed that the liability of the Insurance Company would be effective after 9.00 PM of 16.04.87. Though the present policy does not mention that the policy would be effective after 4.00 PM, in the opinion of this Court, it would not make much difference. Insurance is, in fact, a protection given by the Insurance Company to the holder of the

policy subject to payment of premium. If the premium is paid at a particular time, then the liability of the Insurance Company would commence from that particular time of that particular date, and not before that. If there is a contract to the contrary between the parties, then the policy may be made effective with retrospective effect. In such a case, there must a specific agreement between the insurer and the insured that irrespective of the payment of premium at a particular time on a particular date, the policy would be effective from a particular time of particular date. If there is no express agreement between the parties, then a Court would not be entitled to presume that the policy would become effective from 12.00 midnight of the previous night because the time of commencement is not shown in the policy. In the present case, in view of the findings of the learned Tribunal that the premium was paid at 4.00 PM and not at 11.00 AM and the accident had taken place at 12.00 Noon, the Tribunal should have held that the Insurance Company cannot be made answerable to the claim made by the claimant-respondent.

Without interfering with the amount awarded by the learned Tribunal and without setting aside the liability of the owner of the offending vehicle, I exonerate the Insurance Company of its liability. The appeal, to the extent indicated above, is allowed. No costs.

[R.S.GARG, J.]

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